

REMARKS

Applicant has carefully reviewed and considered the Office Action mailed on May 29, 2003, and the references cited therewith.

Claim 43 is added; as a result, claims 11-43 are now pending in this application.

Restrictions and Elections

The application includes claims 13, 16, 17, 25-30, 34-38 and 41 allegedly drawn to an invention non-elected with traverse. Applicant respectfully traverses the restriction, and draw the Examiner's attention to the fact that claims 13, 16, and 17 are dependent claims that depend on allowed claims 12 and/or 11. No rejection based on 112 indefiniteness is made. Being dependent on an allowed claim, these claims cannot be restricted at this point. See MPEP 809.03 on linking claims. Claim 11 provides an allowed genus claim linking the species of the dependent claims. See the requirement to use Form Paragraph 8.47 described in MPEP 809.04. Reconsideration and withdrawal of rejection/restriction of all dependent claims that depend on allowed claims is respectfully requested.

§103 Rejection of the Claims

Claims **21-24**, 31, 39-40 and 42 were rejected under 35 USC § 103(a) as being unpatentable over Ovshinsky et al. (U.S. 5,411,592) in view of Bates et al. (U.S. 5,338,625). The Examiner asserts ("it is noted that") that laser ablation and sputtering are ion-assist energy deposition techniques. Applicant respectfully traverses this assertion of official notice, and under **MPEP 2144.03**, respectfully request the Examiner cite a reference in support of his position. Ion assist in the present invention creates ions of a secondary material, which are accelerated by an electric field to assist in the layer formation of a primary deposition material. Neither Ovshinsky et al. nor Bates et al. provide ion assist energy, as was described in the previous Amendment and Response filed April 22, 2003, and so that explanation will not be repeated here.

With regard to claim 21, the Examiner asserts that claim 21's language "means for depositing a second layer onto the first layer, wherein the means supplies energy to the second layer to aid in layer formation without substantially heating the substrate." appears to be sufficiently modified to remove it from Section 112 paragraph 6. Applicant respectfully traverses. The limitation provides only function, and does not recite structure. Applicant respectfully asserts that claim 21 is clearly a means-plus-function claim with regard to the recited portion of the claim, and requests reconsideration of the claim 21 under of Section 112 paragraph 6, and withdrawal of the rejection with regard to claim 21 and its dependent claims 39-42. Further, since claim 21 appears to be in condition for allowance, any of its dependent claims (such as 39-40 and 42) should not be restricted from the present application, and should be allowed with the independent claim. If the Examiner maintains the rejection, Applicant respectfully requests that the Examiner clearly identify the structure in the prior art that would be equivalent to the structure described in the application for performing the function recited in the claim.

With regard to claim 22 and its dependent claims, claim 22 recites "wherein the first and the second deposition stations each supply energy to the layer to aid in crystalline layer formation while controlling a stoichiometry of the respective crystalline layers without substantially heating the substrate." This appears to provide language that is quite similar to the language recited by the Examiner as distinguishing claim 11 from the prior art Ovshinsky et al. and Bates et al. Accordingly, claim 22 and its dependent claims 23-31 appear to be in condition for allowance. Reconsideration and withdrawal of the rejection is respectfully requested. Further, since claim 22 appears to be in condition for allowance, none of its dependent claims (such as 25-30) can be restricted from the present application, and should be allowed with the independent claim.

Allowable Subject Matter

Claims 11-12, 14-15, 18-20 and 32-33 were indicated allowed.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 373-6949 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 29th day of August, 2003

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Name Signature